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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,321	12/12/2003	Dennis Erickson	S758 0002/TAR	9077

720 7590 12/03/2008  
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EXAMINER
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CHAPMAN, JEANETTE E

ART UNIT	PAPER NUMBER
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3633

MAIL DATE	DELIVERY MODE
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12/03/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/733,321	<b>Applicant(s)</b> ERICKSON ET AL.	
	<b>Examiner</b> Jeanette E. Chapman	<b>Art Unit</b> 3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7, 12-18, 20-32, 34-41, 43-45 and 47-56 is/are pending in the application.
- 4a) Of the above claim(s) 15-17, 20, 27, 28, 31, 32, 34-40 and 56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 12-14, 16, 18, 21-26, 29, 30, 41, 43-45 and 47-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/24/04, 12/12/03</u>   | 6) <input type="checkbox"/> Other: _____                          |

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Newly submitted claim 56 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Newly added claim is directed toward a framing system with upper and lower tracks. Previous claims were simply directed to a track.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 56 has been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7,12-14,16,18,21-26,29,30,41,43-45,47-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over "STEELER INC.- Deflection Track" in view of Paradis (6115984), Andrews (7223043) and Simon (3999875).

In reference to claims 1,43,47,53-55, "STEELER INC. - Deflection Track" discloses a track including a web (W) and one or more deformable legs (L), having a deformable portion (D) at a distal edge thereof with three bends. "STEELER INC. - Deflection Track" discloses the basic claimed track except for the particulars of the deformable portion.

Simon teaches the use of a track (10) wherein the deformable portion includes at least four bends (E,G,I,K) and (FHJL). Simon further includes the four longitudinal extending

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bend lines and the four bends extending longitudinally to be substantially longitudinally coextensive with the legs. Further the groove associated with the bend lines extends in the longitudinal direction to be substantially longitudinally coextensive with the legs. Andrews discloses a track with a web 11 and legs 13 and 14. Each leg includes a deformable portion 20 and 21 located between the web 11 and the distal ends of the legs. The deformable portion is bent along three longitudinally extending bend lines. Each of the bends is compressible to reduce the interior angle and expandable to increase its interior angle. See column 10, lines 39-44 and see figure 6. if the stud is retracted or extend then also the plate which encompasses the lower end of the stud. Further the deformation of the deformable portion of each leg is accompanied by relative movement of the distal edge of the leg in a direction towards the web or in a direction away from the web; see figure 6.

Applicant argues that Simon does not teach the deformable portion. The examiner argues that anything can be deformed if the user so desires and given the correct amount of force. Nevertheless, Paradis figure 2 discloses a deformable portion of a stud 42/44, the deformable portion are bent along four or more bend lines and compressible to reduce to reduce the interior angle and expandable to increase the interior angle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the track of "STEELER INC. - Deflection Track" with the deformable portion as taught by Andrews and Paradis and including the four bend portions of Simon in order to provide the track with more versatility in bending.

Regarding claims 2,12,21,41,45,48, the deformable portion (D) consists of a unitary piece of material and is resiliently deformable using one or more legs.

In reference to claims 3,5-7,18, 20,34,43,44,47,49,50-55, the deformable portion (D) allows the track to compress in the longitudinal direction and expand orthogonally. Andrews shows the each deformable groove being compressible in a direction orthogonal to the longitudinal direction and expandable in a direction orthogonal to the longitudinal direction. See figure 6.

In regards to the angles formed in the deformable portion, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select an angle suitable for the use intended as an obvious matter of design choice. For instance, in areas where earthquakes are common perhaps an angle that is wider to compensate for the extra forces imposed thereon would be appropriate.

Regarding claims 4,13,14,16,22-26,29,30, the deformable portion (GI OR HJ), as modified by Simon has a first angled portion (C,E, G OR D,F,H), a second angled portion (I, K, M OR J, L, N) and a central portion (GI OR HJ) between the four bends (E,G,I,K OR F,H,J, L), and a flat portion MO OR PN) between deformable portions wherein the deformable portion extends outwardly of the track and the track is coupled to opposite ends of another track near the flat portions.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-7, 12-14, 18, 21-26, 29-30,41,43-45,47-55 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeanette Chapman whose telephone number is (571) 272-6841. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571) 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

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applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-.1000

/Jeanette E Chapman/  
Primary Examiner, Art Unit 3633